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KARL MORELL

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DEC - 5 2012

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December 5, 2012

233459

**FILED**

DEC - 5 2012

**SURFACE  
TRANSPORTATION BOARD**

Hand Delivered

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street S W  
Washington, DC 20423-0001

Re: Finance Docket No 35590, Illinois Railway, L L C., Chicago,  
Central & Pacific Railroad Company and Dakota, Minnesota &  
Eastern Railroad Corporation – Joint Relocation Project  
Exemption – In Rockford, IL

Dear Ms. Brown:

Attached for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. 1180.2(d)(5) and a check covering the \$2,400 filing fee

Please time and date stamp the extra copy of the Notice of Exemption and return it with our messenger.

If you have any questions, please contact me.

Sincerely yours,

*Karl Morell*

Karl Morell

Enclosure

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**SURFACE  
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Portland, Oregon

Bend, Oregon

Seattle, Washington

Washington, DC

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**TRANSPORTATION BOARD**

BEFORE THE

233459

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO 35590



ILLINOIS RAILWAY, L.L.C., CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY  
AND DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION  
--JOINT RELOCATION PROJECT EXEMPTION--  
IN ROCKFORD, IL

ENTERED  
Office of Proceedings

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Part of  
Public Record

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1180.2(d)(5)

**FILED**

DEC - 5 2012

**TRANSPORTATION BOARD**

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Attorneys for DAKOTA,  
MINNESOTA & EASTERN  
RAILROAD CORPORATION

Dated: December 5, 2012



BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35590

ILLINOIS RAILWAY, L.L.C., CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY  
AND DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION  
--JOINT RELOCATION PROJECT EXEMPTION--  
IN ROCKFORD, IL

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1180.2(d)(5)

Illinois Railway, L.L.C. ("IR"), Chicago, Central & Pacific Railroad Company ("CC&P"), and Dakota, Minnesota & Eastern Railroad Corporation dba Canadian Pacific ("CP")<sup>1</sup> jointly file this Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(5), for a joint relocation project in the City of Rockford, Winnebago County, Illinois (the "City") The joint relocation project will not disrupt service to shippers.

In support of this Notice of Exemption, IR, CC&P and CP submit the following information as required by 49 C.F.R. § 1180.4(g):

Section 1180.6(a)

- (1) A description of the proposed transaction
  - (i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of counsel to whom questions regarding the proposed transaction can be addressed

<sup>1</sup> IR is a subsidiary of OmniTRAX, Inc. CC&P is an indirect subsidiary of Canadian National Railway Company and is operated as part of the CN rail system.

The proposed joint relocation project (the "Relocation Project") will facilitate the removal and replacement of an old highway bridge (the "Morgan Street Bridge") over the Rock River in the City. The Morgan Street Bridge was originally constructed in 1916 and reconstructed in 1956. The Morgan Street Bridge currently carries approximately 10,000 vehicles a day and is restricted to vehicles weighing less than 10,000 pounds. The replacement bridge will support a Class II Truck Route.

To facilitate the City's bridge replacement project, IR and CC&P have agreed to re-align their trackage and interchanges in the area including the removal of IR's tracks located beneath the Morgan Street Bridge. The Relocation Project provides a number of public and private benefits. Public safety will be enhanced through the closing of existing public highway-rail grade crossings and the upgrading of five existing highway-rail grade crossings. The removal of the IR-CC&P diamond south of the Morgan Street Bridge will improve railroad safety and decrease maintenance costs for the railroads. The removal of the IR tracks below the Morgan Street Bridge and conveyance of the right-of-way to the City will also allow for the design and construction of a safer and more sustainable highway bridge.

The Relocation Project is sponsored by the City and is funded in part by the Illinois Commerce Commission.

The components of the Relocation Project are as follows:

1. IR will acquire limited overhead trackage rights over CC&P between approximately CCP Milepost 85.75 and CC&P's connection to the CP at or near CCP Milepost 86.85, a physical distance of approximately 1.1 miles, with the right to enter and exit IR's main line west of the diamond at approximately CCP Milepost 85.75 and the right to enter and exit IR's former main line track east of the diamond at approximately CCP Milepost 85.65 (including

over CC&P between CCP Milepost 85.65 and CCP Milepost 85.00 for headroom), to enable IR to continue serving Joseph Behr & Sons, Inc. ("Behr") (the "IR Trackage Rights"). *See* Exhibit A. The IR Trackage Rights will allow IR to use the CC&P route across the Rock River and existing rights over CP in order to access the IR's Yard at South Rockford.

2. CC&P will acquire limited local trackage rights over IR between approximately IR Milepost 22.54 and IR Milepost 21.90, a distance of approximately .64 miles to enable CC&P to continue serving Accuride Wheel End Solutions, formerly Gunite Foundries ("Gunite") (the "CC&P Trackage Rights"). *See* Exhibit B.

3. A new connecting track will be constructed west of the diamond at or near CCP Milepost 85.75 to facilitate IR's use of the IR Trackage Rights and to facilitate CC&P's use of the CC&P Trackage Rights. *See* Exhibit A.

4. A new connecting track connecting CC&P's mainline and the former IR mainline north of the diamond will be constructed east of the diamond at or near CCP Milepost 85.65 to facilitate IR's use of the IR Trackage Rights to enable IR to continue serving Behr. *See* Exhibit A.

5. IR will remove the diamond and its trackage on either side of the diamond between the two new connecting tracks and between IR Milepost 23.05 (approximately 150 feet south of the center line of Morgan Street) to IR Milepost 23.45 (at the north end of IR's Rock River bridge). *See* Exhibit C.

6. CC&P will remove certain industrial lead track south of the diamond (located parallel to the IR's line) currently used by CC&P to serve Gunite.

7. CP will discontinue its overhead trackage rights over IR between IR Milepost 22.54 to IR Milepost 23.5, which were granted to CP's predecessor in interest Central Illinois

and Wisconsin Railroad Company by IR's predecessor in interest Chicago, Rockford and Northern Railroad Company pursuant to an agreement dated November 5, 1881 and as later modified by an agreement between the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and the Chicago, Burlington & Quincy Railroad Company dated August 31, 1928<sup>2</sup>

Once the Relocation Project is completed, IR will quitclaim to the City its right-of-way for a distance of 750 feet north of the centerline of Morgan Street and 150 feet south of the centerline of Morgan Street.

The proposed Relocation Project will not disrupt service to shippers. There are only two rail shippers located adjacent to the lines being relocated: Gunita and Behr. CC&P will continue to have access to Gunita via the new connecting track west of the former diamond and the CC&P Trackage Rights. IR will continue to have access to Behr via the new connecting track east of the former diamond and the IR Trackage Rights. Accordingly, the proposed Relocation Project qualifies for the class exemption at 49 C.F.R. § 1180.2(d)(5). A copy of this Notice of Exemption is being served on Gunita and Behr.

The Board will exercise jurisdiction over the abandonment and construction components of a joint relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into a new territory. See *City of Detroit v. Canadian National Ry. Co., et al.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom. Detroit/Wayne County Port Authority v. ICC*, 59 F.3d 1314 (D.C. Cir. 1995). Also, line relocation projects may embrace trackage rights. See *D.T. & I.R.--Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction and trackage

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<sup>2</sup> CP's overhead trackage rights over IR through this area have been relocated to the CC&P route. The Board authorized CP's acquisition of overhead trackage rights over CC&P between CCP Milepost 85.6 ± at Rockford Junction and the CC&P/CP connection at or near Milepost 86.7± in Rockford in *Dakota, Minnesota & Eastern Railroad Corporation - Trackage Rights Exemption - Chicago, Central & Pacific Railroad Company*, STB Finance Docket No. 35589 (STB served Feb. 3, 2012).

rights components of this Relocation Project require no separate approval or exemption since the project will not disrupt service to shippers, expand IR's or CC&P's service into a new territory, or alter the existing competitive situation.

The name and business address of Applicants are as follows:

Illinois Railway, L L.C.  
252 Clayton Street, 4th Floor  
Denver, CO 80206

Chicago, Central & Pacific Railroad Company  
17641 South Ashland Avenue  
Homewood, IL 60430

Dakota, Minnesota & Eastern Railroad Corporation  
140 North Phillips Avenue  
Sioux Falls, SD 57104

IR's representative:

Karl Morell  
Of Counsel  
Ball Janik LLP  
655 Fifteenth Street, N W , Suite 225  
Washington, D.C. 20005  
(202) 638-3307

CC&P's representative:

William C. Sippel  
Fletcher & Sippel LLC  
29 North Wacker Drive, Suite 920  
Chicago, IL 60606  
(312) 252-1500

CP's representative:

W Karl Hansen  
Leonard, Street and Deinard  
Professional Association  
150 South 5<sup>th</sup> Street, Suite 2300  
Minneapolis, MN 55402  
(612) 335-1500

- (ii) The proposed time schedule for consummation of the proposed transaction. The transaction will be consummated sometime after the effective date of this Notice of Exemption.
- (iii) The purpose sought to be accomplished by the proposed transaction. The joint relocation project will facilitate the replacement of the Morgan Street Bridge.

(a)(5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

The relocation project is located entirely in the State of Illinois.

IR is situated in the State of Illinois.

CC&P is situated in the States of Illinois, Iowa, Minnesota, and Nebraska.

DM&E is situated in the States of Illinois, Iowa, Missouri, Kansas, Nebraska, Wisconsin, Minnesota, South Dakota, and Wyoming.

(a)(6) Map.

Maps illustrating the Relocation Project are attached as Exhibits A, B and C.

(a)(7)(ii) Agreement.

A copy of the Memorandum of Understanding between the City, IR and CC&P governing this Relocation Project is attached as Exhibit D. A redacted copy of the Trackage Rights Agreement dated January 19, 2012 for the IR Trackage Rights is attached as Exhibit E and a redacted copy of the Trackage Rights Agreement dated January 19, 2012 for the CC&P Trackage Rights is attached as Exhibit F. An unredacted copy of each Trackage Rights Agreement is being filed separately along with a motion for protective order.

IR, CC&P and CP are agreeable to the labor protection conditions imposed in trackage rights proceedings as found in *Norfolk and Western Ry Co. – Trackage Rights – BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc. – Lease and Operate – California Western Railroad*, 360 I.C.C. 653 (1980).

This action will not significantly affect either the quality of the human environment or energy conservation. Environmental impacts associated with trackage rights generally are considered to be insignificant. Therefore, an environmental report and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R. § 1105.6(c) and the proposed transactions are exempt from historic reporting requirements under 49 C.F.R. § 1105.8(b). The incidental abandonment and construction of new tracks are transactions which are not subject to the Board's jurisdiction in this proposed relocation project.


Respectfully submitted,



Thomas J. Healey  
CC&P  
17641 South Ashland Avenue  
Homewood, Illinois 60430  
(708) 332-4381



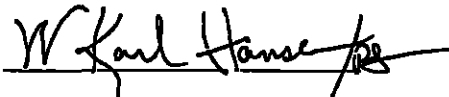
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(612) 335-1500

Attorneys for DAKOTA, MINNESOTA  
& EASTERN RAILROAD CORPORATION

Dated: December 5, 2012

VERIFICATION

STATE OF COLORADO

)

ss.

COUNTY OF DENVER

)

)

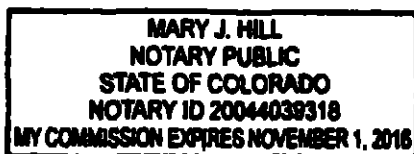
I, Kendall<sup>K200</sup> being duly sworn depose and state that I am <sup>Vice President</sup>~~Engineer~~ of Illinois Railway, L.L.C., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

Kendall F. Hoff

SUBSCRIBED AND SWORN TO before me this 14<sup>th</sup> day of November, 2012, in the County of Denver, State of Colorado.

My Commission Expires: Nov. 1, 2016

Mary J. Hill  
Notary Public



VERIFICATION

STATE OF ILLINOIS                    )  
  )    ss  
COUNTY OF COOK                    )

I, Paul E. Ladue, being duly sworn, depose and state that I am Regional Director – Contracts and Administration of Chicago, Central & Pacific Railroad Company, that I am authorized to make this verification, that I have read the foregoing Notice of Exemption, know the facts asserted therein as they pertain to Chicago, Central & Pacific Railroad Company, and that the same are true and accurate to the best of my knowledge, information, and belief

Paul E. Ladue

SUBSCRIBED AND SWORN TO before me this 20th day of November, 2012, in the County of Cook, State of Illinois

My Commission Expires. 9/25/2014

Patricia A. Zieminski  
Notary Public



VERIFICATION

PROVINCE OF ALBERTA                    )  
  )    ss.  
CITY OF CALGARY                        )

I, Adolph Gameiro, being duly sworn depose and state that I am the Director Interline Agreements of the Dakota, Minnesota & Eastern Railroad Corporation, that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief

Adolph Gameiro  
Adolph Gameiro

SUBSCRIBED AND SWORN TO before me this 27th day of November, 2012, in the City of Calgary, Province of Alberta.

My Commission Expires. N/A

Janice Erion  
Notary Public

**JANICE ERION**  
Barrister & Solicitor  
Notary Public  
in and for the Province of Alberta

# EXHIBIT A ROCKFORD, IL



Exhibit B

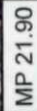


EXHIBIT C



## EXHIBIT D

**MEMORANDUM OF UNDERSTANDING**  
**Railroad Consolidation: Rockford Junction**  
**Relocation of Illinois Railway/Elimination of Rockford Junction Diamond**  
**Located South of Joseph Behr & Sons Facility**  
**West of Kishwaukee Street**  
**Rockford, Winnebago County, Illinois**

This Memorandum of Understanding, dated as of April 29, 2010 ("MOU"), is between Chicago, Central & Pacific Railroad Company ("CN"), Illinois Railway, Inc. ("IR"), Joseph Behr & Sons, Inc. ("Behr") and The City of Rockford, IL ("City"). The term "Parties" refers collectively to CN, IR, Behr and City.

WHEREAS, the City, in order to facilitate the free flow of traffic and insure the safety of the motoring public, is desirous of improving Morgan Street and College Avenue, which includes the removal and replacement of the Morgan Street Bridge by the City over the Rock River.

WHEREAS, in order to facilitate the project, the City retained a consulting engineer to perform Phase I & Phase II plans and to coordinate design concepts and permitting with the Illinois Department of Transportation ("IDOT").

WHEREAS, as part of the project the City is proposing the relocation of the IR and elimination of the diamond junction at the Rockford Junction (at the point of crossing between the CN and the IR, located south of the Behr recycle yard found immediately west of Kishwaukee Street (IL Rte 251) and north of Buckbee Street.

WHEREAS, as part of the project, CN will upgrade and improve the connection at South Main Street in order to eliminate impacts to vehicular traffic from CPR or IR trains entering or exiting CN trackage at this location.

WHEREAS, as part of the project, IR will abandon its track from MP 22.46 (at the north end of Buckbee Street) to MP 22.54 (just north of the CN diamond) and from MP 23.05 (150 feet south of the centerline of Morgan Street) to MP 23.445 (at the north end of the bridge) and transfer ownership of the railroad bridge over the Rock River as provided in this MOU. The track up to the 150 foot point on the south end MP 23.05 to MP 22.54 will remain in place to service Behr.

WHEREAS, the relocation of the IR is an effort led by the City to enhance the quality and function of the Morgan Street Bridge and surrounding planning area. The proposal is the result of a Federal Highway Administration ("FHWA") mandated Value Engineering ("VE") Study which found that significant savings could be found for the bridge project if the IR was permanently relocated. The VE Study Group found that savings could be achieved in the area of railroad coordination and liability, general constructability and mitigation of future scour hazards due to pier locations at this high hazard scour location.

WHEREAS, this MOU serves to provide the City, the CN, the IR and Behr with a document outlining the terms, guiding principles and participation for the above referenced project, which will allow the relocation of the IR (*Project*). The purpose of the MOU is to outline the *Project* and each entity's input and involvement and responsibility in the planning and implementation of the Project. There is no intent within this MOU to expand direct service to any other rail carrier that is not already able to directly serve any customer, as a result of the Morgan Street Bridge Project.

WHEREAS, the Parties have discussed the forgoing issues and agree in principle to the matters hereinafter set forth, subject to negotiation, execution and delivery of final and binding definitive agreements regarding the same as hereinafter contemplated.

1. The *Project* to relocate the IR at the Morgan Street Bridge site is described in general as follows:

- a. The IR crosses the CN at grade (diamond), 2750 feet south of the Morgan Street Bridge.
- b. A new turnout will be constructed west of the diamond and the IR, south of the diamond, would swing around a curve to the west and connect to the CN. Construction of this new connection will allow the IR to use the CN Bridge to cross the Rock River and access the IR yard at South Main Street.
- c. In order for the railroads to achieve the full safety benefit of this proposal, the diamond will be removed.
- d. Removal of the diamond will be accomplished by constructing a new turnout on the CN, east of the diamond, which will connect to the IR mainline track north of the diamond.
- e. Replace the South Main Street switch on CN at approximately MP 86.7 with a power turnout, establish a new signal control point, upgrade connecting track and bridge ties, and establish centralized traffic control ("CTC") between Rockford Junction (approximately MP 85.6) and South Main Street switch (approximately MP 86.7).

Upon completion of the new turnout from the CN to the IR north, the diamond can be removed and Behr can be served by the IR over CN's mainline and the new turnouts and IR's trackage.

It has been determined that the CN turnout and track ("West Belt") to various industries, including Gunito Foundry, will be relocated to IR's track, allowing the removal and retirement of CN's West Belt industrial trackage and removal of grade crossings at four City streets (Buckbee Street, 15<sup>th</sup> Avenue, 16<sup>th</sup> Avenue and 18<sup>th</sup> Avenue) allowing additional safety benefits to be derived

from this Project. After removal, access to these industries on this industrial corridor will be over the IR mainline trackage.

2. The City, acting as the lead agency, the CN, IR and Behr desire to improve the operation the railroads in the vicinity of the Morgan Street Bridge and the Rockford Junction in the manner outlined in Item No. 1. The rail improvements will allow the bridge project to use portions of the vacated railroad right-of-way for bridge construction purposes and achieve cost savings. The City's financial obligation is limited to the obligation incurred as a result of inclusion of the aforementioned project into the Morgan Street Bridge Project via the Value Engineering process. The City's intention is to construct the *Project* with funds obligated by the Illinois Commerce Commission ("ICC") for the construction of Morgan Street Bridge. This will be done with the full knowledge and permission of the ICC. The level of funding granted by the ICC for Morgan Street Bridge is not known at this time. The full cost of implementation of the *Project* is also not known at this time. Any gap in funding will be addressed prior to the commencement of the Project but in no event will CN, IR or Behr be responsible for any of the Project costs.
3. The Value Engineering study area is defined on the attached Exhibit A. The scope of the *Project* is subject to change with further City, CN, IR and Behr input to the planning and design.
4. The areas of shared interest between the City, CN, IR, and Behr include:
  - a. Mutual cooperation is required of all parties to obtain ICC and Surface Transportation Board ("STB") approvals, if necessary.
  - b. Timing is of the essence. The final agreement for the *Project* must be completed by end of June 2010 with best efforts for Railroad construction for the East (or South Junction) portion to be completed by end of May 2011 and the West end portion to be completed by October 2011.
  - c. Construction scheduling is to be accomplished with a minimum of disturbance to Railroad and Industry operation.
5. The Responsibilities of the City, CN, IR and Behr are defined as follows:
  - a. City shall, at its own cost and expense:
    - i. Provide an accurate track and topographic survey,
    - ii. Prepare concept level engineering studies for the proposed *Project*.
    - iii. Prepare a preliminary cost estimate.
    - iv. Prepare ROW Drawings and Legal Descriptions.
    - v. Purchase ROW in the southwest quadrant and dedicate to the IR.
    - vi. Prepare Final Engineering Plans and Specifications for the *Project* and submit the completed final project plans and specification to CN and IR for their review and approval.

- vii. Coordinate ICC Funding, as it applies to the Morgan Street Bridge project, for use on the *Project*.
- viii. Accept the transfer to it by IR of the right-of-way abandoned by IR and the IR railroad bridge.

b. CN shall:

- i. Grant trackage rights to the IR and either Canadian Pacific Railway or its wholly owned subsidiary Iowa, Chicago and Eastern Railroad Company (collectively referred to as "CPR"), from the new interconnect through the South Main Rail Yard Interconnect, as shown and described on Exhibit B, at terms and conditions to be negotiated between CN and IR and between CN and either CPR or ICE.
- ii. Coordinate, review and, if acceptable to CN, approve construction plans for the *Project*.
- iii. Provide a detailed cost estimate for the work to be performed on the CN ROW including Signal Interconnects and repairs to the interconnect track in the South Main Rail Yard as shown and described on Exhibit B.
- iv. Construct CN track and signal interconnect improvements, upgrade its current connections, installation of a powered switch connection in the vicinity of Catherine Street, removal of existing diamond and interlocking ("Force Account") at the sole cost and expense of the City.
- v. Quit Claim deed to all of its right, title and interest, if any, if and to the irregular parcel of land (Lease #18774) and the track thereon located near the old CN turnout, 6000+ SF to Behr on an "as is, where is" basis.
- vi. Retain the right to directly market railroad services to Behr, on the basis that IR shall continue to be the sole railroad providing the actual switching of Behr over improvements included in the Project and further subject to an agreement between IR and CN that IR shall exclusively provide the switching services to and from Behr and CN related to the Project as defined in Section 5.c.viii of this MOU.

c. IR shall:

- i. Grant trackage rights to the CN from the new interconnect, south to serve the same industries it currently services, including Gunite Foundry, all as shown and described on Exhibit B, at terms and conditions to be negotiated between IR and CN.
- ii. Coordinate, review and, if acceptable to IR, approve construction plans for the *Project*.
- iii. Provide detailed cost estimate for the work to be performed on the IR ROW or coordinate and approve estimates provided by City (Details are described on Exhibit C).

- iv. Coordinate relocation of power poles and if possible place the relocated power poles in the existing ROW for the *Project*, as provided in easement granted to Commonwealth Edison (Formerly Central Illinois Electric and Gas Company).
  - v. Seek abandonment or discontinuance from MP 22.46 (at the north end of Buckbee Street) to MP 22.54 (just north of the CN diamond) and from MP 23.05 (150 feet south of the centerline of Morgan Street) to MP 23.445 (at the north end of the bridge) and transfer ownership of the railroad bridge over the Rock River as provided in this MOU. The track up to the 150 foot point on the south end MP 23.05 to MP 22.54 will remain in place to service Behr.
  - vi. After the abandonment is authorized and IR consummates it, the City shall salvage the rails, ties and other track materials and stockpile the rail for IR's use and dispose of the ties and other track materials. In return for the salvaging of the rail, ties and other track materials, IR will quitclaim that portion of the former rail ROW to City for a distance of 750 feet north of the centerline of Morgan Street and 150 feet south of the centerline of Morgan Street (MP23.05) on an "as is, where is" basis.
  - vii. Except for those portions, which may be necessary, to facilitate trackside maintenance or for placement of signal apparatus, quitclaim deed the balance of the abandoned right-of-way referenced in v.i. above, including the IR railroad bridge over the Rock River on an "as is, where is" basis, to City.
  - viii. Enter into one or more arrangements with CN, as shown below, allowing CN to retain its right to market railroad services to Behr:
    - a) Normal interline rates and interchange;
    - b) Contract switching agreement;
    - c) Reciprocal switch tariff.
  - ix. In the event that IR ceases operations on said tracks to serve Behr or other industries, including Gunit Foundry, along the corridor as provided in Section 5.c i, CN shall have the right of first refusal to purchase said tracks at net liquidation value in order to directly serve these customers.
  - ix. Construct the new connection track from the new turnout in the CN mainline to Behr as provided in Section 1.d. of this MOU.
- d. Joseph Behr & Sons shall:
- i. Coordinate, review and, if acceptable to Behr, approve construction plans for the Project.
  - ii. Dedicate ROW to the CN or IR if required.
  - iii. Remove the storage bin walls if required to eliminate a clearance conflict with the relocated track.

- iv. Coordinate the relocation of the ComEd industrial service pole and transformer bank located in the northeast quadrant of the diamond. Cost of the pole and transformer relocation is included in the *Project*.
- v. Quit Claim deed to IR the parcel of land necessary to complete the connection as provided in Section 5.c.ix of this MOU.

- 6. The Parties agree to negotiate the terms of the final agreements and documents referenced above in good faith. This MOU shall remain in effect until those final agreements and documents are completed and executed by the Parties or December 2010, whichever occurs first.
- 7. This Memorandum of Understanding shall be binding upon the parties hereto, their successors and assigns.
- 8. Counterparts: This MOU may be executed in counterparts, which together shall constitute a single, original document.

IN WITNESS WHEREOF, The Parties hereto have caused this MOU to be duly executed as the dates indicated below.

Approved: \_\_\_\_\_

  
Lawrence J. Morrissey, Mayor  
City of Rockford

Date: \_\_\_\_\_

4/29/10

Approved: \_\_\_\_\_

Paul Ladue, Region Director  
Contracts & Administration  
Chicago, Central & Pacific Railroad Company

Date: \_\_\_\_\_

Approved: \_\_\_\_\_

Mike Ogborn, Director  
Illinois Railway, Inc.)

Date: \_\_\_\_\_

Approved: \_\_\_\_\_

William Bremner, President  
Joseph Behr & Sons Inc.

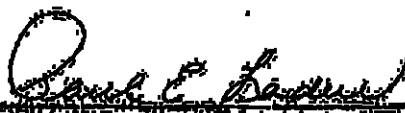
Date: \_\_\_\_\_

- IV. Coordinated relocation of the Conrail industrial service pole and transformer bank located in the northeast quadrant of the diamond. Cost of the pole and transformer relocation is included in the ~~Project~~.
- V. Quit claim deed to IR the parcel of land necessary to complete the connection as provided in Section 5.6.12 of this MOU.

6. The Parties agree to negotiate the terms of the final agreements and documents referenced above in good faith. This MOU shall remain in effect until final agreements and documents are completed and executed by the Parties or December 2010, whichever occurs first.
7. This Memorandum of Understanding shall be binding upon the parties hereto, their successors and assigns.
8. Counterparts: This MOU may be executed in counterparts, which together shall constitute a single, original document.

IN WITNESS WHEREOF, The Parties hereto have caused this MOU to be duly executed as the dates indicated below.

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Lawrence J. Morrissey, Mayor  
City of Rockford

Approved:  Date: 11/29/10  
Paul L. Baker, Region Director  
Contracts & Administration  
Chicago, Central & Pacific Railroad Company

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Mike Quinn, Director  
Illinois Railway Inc.

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
William Branner, President  
Joseph Behn & Sons Inc.

- iv. Coordinate the relocation of the ComEd industrial service pole and transformer bank located in the northeast quadrant of the diamond. Cost of the pole and transformer relocation is included in the *Project*.
  - v. Quit Claim deed to IR the parcel of land necessary to complete the connection as provided in Section 5.c.ix of this MOU.
6. The Parties agree to negotiate the terms of the final agreements and documents referenced above in good faith. This MOU shall remain in effect until those final agreements and documents are completed and executed by the Parties or December 2010, whichever occurs first.
7. This Memorandum of Understanding shall be binding upon the parties hereto, their successors and assigns.
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Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Lawrence J. Morrissey, Mayor  
City of Rockford

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Paul Ladue, Region Director  
Contracts & Administration  
Chicago, Central & Pacific Railroad Company

Approved: Mike Ogborn Date: 4/29/10  
Mike Ogborn, Director  
Illinois Railway, Inc.)

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
William Bremner, President  
Joseph Behr & Sons Inc.

- iv. . Coordinate the relocation of the ComEd industrial service pole and transformer bank located in the northeast quadrant of the diamond, Cost of the pole and transformer relocation is included in the *Project*.
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 Paul Ladue, Region Director  
 Contracts & Administration  
 Chicago, Central & Pacific Railroad Company

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
 Mike Ogborn, Director  
 Illinois Railway, Inc.)

Approved: William Bremner Date: 1/29/10  
 William Bremner, President  
 Joseph Behr & Sons Inc.

**EXHIBIT E**

**TRACKAGE RIGHTS AGREEMENT**

**Agreement No. \_\_\_\_\_**

**between**

**CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY**

**("CN")**

**And**

**ILLINOIS RAILWAY, L.L.C.**

**("IR")**

**Relating to IR'S Limited Trackage Rights Over CN between CN's future  
connections to IR at Rockford Junction and CN's connection to Dakota,  
Minnesota and Eastern Railroad Company, doing business as  
Canadian Pacific Railway Company on CN's Freeport Subdivision in Rockford, IL**

## **TRACKAGE RIGHTS AGREEMENT**

**THIS AGREEMENT** ("Agreement"), entered into as of this 19 day of January 2012, by and between the **CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY**, (hereinafter referred to as "**CN**" or "**OWNER**") and the **ILLINOIS RAILWAY, L.L.C.**, (hereinafter referred to as "**IR**" or "**USER**").

**WHEREAS**, CN owns and operates a segment of railroad located between Milepost 85.0 and Milepost 86.85 (CN's connection to the Dakota, Minnesota & Eastern Railroad Company, doing business as Canadian Pacific Railway Company "CPR Connection") on CN's Freeport Subdivision in Rockford, IL as shown on Exhibit "A" attached and made a part hereof; and

**WHEREAS**, the CN, IR and City of Rockford ("City") entered into a Memorandum Of Understanding dated April 29, 2010, which, among other things, provided for the construction of two (2) connecting tracks at or near CN's Milepost 85.75 and 85.65 ("Rockford Junction") between CN and IR at the sole cost and expense of City as shown on Exhibit A and for CN to provide overhead trackage rights to IR between Milepost 85.0 and the CPR Connection and for IR to be able to service Joseph Behr & Sons, Inc ("BEHR"); and

**WHEREAS**, IR has requested trackage rights between Milepost 85.0 and the CPR Connection to allow IR to service BEHR at or near Milepost 85.65 and for IR to ingress and/or egress IR tracks at or near Milepost 85.75 on CN's Freeport Subdivision in Rockford, IL; and

**WHEREAS**, CN agrees to grant IR limited overhead trackage rights for the movement of freight traffic between Milepost 85.0 and the CPR Connection and to allow IR to ingress and/or egress IR tracks at or near Milepost 85.75 and for IR to be able to service BEHR at or near Milepost 85.65 on CN's Freeport Subdivision in Rockford, IL, subject to the terms and conditions set forth herein.

**NOW THEREFORE**, the parties hereto, intending to be legally bound, agree as follows:

### **SECTION 1.0                    GRANT OF TRACKAGE RIGHTS**

1.1     Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate, in overhead freight service only, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of Owner's railroad as shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

- Between Milepost 85.0 and CN's connection to CPR at or near Milepost 86.85 (CPR Connection) on CN's Freeport Subdivision in Rockford, IL, as shown on Exhibit A including (1) all sidings, yard tracks and yard leads now existing or hereafter constructed along the aforesaid tracks to be used hereunder, and (2) right-of-way for the aforesaid tracks, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the parties hereto, a physical distance of approximately 1.85 miles and a chargeable distance of 1.1 miles in accordance with the terms and conditions of Section 4.

1.2     Such rights shall include the right to enter and exit the Subject Trackage at:

- 1.2.1   CN's connection to IR at or near milepost 85.65 on CN's Freeport Subdivision in Rockford, IL (to serve BEHR).

1.2.2 CN's connection to IR at or near milepost 85.75 on CN's Freeport Subdivision in Rockford, IL.

And any other existing or new location(s) that the parties may mutually agree upon.

**SECTION 2.0                    USE OF SUBJECT TRACKAGE**

- 2.1 User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement, except as provided below.
- 2.2 Except as may otherwise be provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.
- 2.3 Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.
- 2.4 User shall have the right to operate in either direction over the Subject Trackage.
- 2.5 Owner and User shall work together to establish a schedule for the handling of User's trains.
- 2.6 User shall be responsible for contacting User's dispatcher or CPR's dispatcher prior to entering the Subject Trackage to insure that User will not be delayed from departing Subject Trackage at the authorized exit location. User shall ensure that its trains i) have a clear route (or available offline staging capacity) beyond the Subject Trackage; ii) are not staged, held, stored, or parked on the Subject Trackage (except at the direction of Owner), or otherwise unreasonably interfere with the joint use of the Subject Trackage; iii) are staffed with qualified crews that have sufficient hours of service remaining to clear the Subject Trackage, iv) User shall have sufficient fuel for the entire movement on CN; and v) restore all connection switches for mainline movement on and by Owner (collectively "Clearance Obligations").
- 2.7 User shall provide Owner with train information via AAR EDI 161 standard format and will include train symbol, estimated time of arrival, train length, tonnage, load/empty count, locomotives, and end of train device.
- 2.8 The rights provided to User under the terms of this Agreement are for the sole purpose of User transporting its own traffic over the Subject Trackage. Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the User any right or benefit under or by reason of this Agreement. User shall not move traffic for or on behalf of any other party or foreign railroad or under guise of doing business as User.
- 2.9 User shall not permit or admit any third party to the use of all or any portion of the Subject Trackage, nor have the right to detour trains of any other railroad over or upon the Subject Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own Equipment over or upon the Subject Trackage, or any portion thereof, the Equipment of any third party which in the normal course of business would not be considered the Equipment of User; provided, however, that the foregoing shall not prevent User, pursuant to a run-through agreement with any railroad, from using locomotives and cabooses of another railroad as its own under this Agreement. In the event that User desires to move traffic over which it is not the linehaul carrier in its trains, User shall make such detailed request in writing as provided in Section 20, but User shall not move such traffic in User's trains without obtaining the

prior written consent of CN which such consent shall not be unreasonably withheld, and which shall require a written amendment to this Agreement prior to movement of said traffic.

- 2 10 User shall not connect or interchange with itself or with any other railroad at any location along the Subject Trackage.

### **SECTION 3.0                    RESTRICTION ON USE**

Except to enable User to service BEHR, the trackage rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the terminals of Subject Trackage and User shall not perform any local freight service whatsoever at any point located on Subject Trackage.

### **SECTION 4.0                    COMPENSATION**

- 4 1     The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be (hereinafter referred to as the "Base Charge")
- 4.2     Thereafter, User will pay Owner a sum computed by multiplying. (i) the Base Charge, as may be revised in accordance with Section 4.5, by (ii) the number of loaded and empty cars, locomotive and caboose units moved by User with its own crews and power in each direction over the Subject Trackage, by (iii) 1.1 miles. For purposes of this Agreement, each locomotive unit, each caboose, and each platform of an articulated car shall be counted as one car.
- 4 3     With respect to articulate units, the number of cars shall be determined by the AAR Car Type Code as defined in the ULMER Specification Manual. The second character in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S586) would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 53' containers in each well. (Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.)
- 4.4     User will furnish to Owner, in care of Manager Contract Compliance, or their designates, at the end of each month, a statement of the number of loaded and empty cars, locomotives and caboose units operated in each direction over the Subject Trackage during the month. Based on this statement, Owner will render to User a bill, computed in accordance with the provisions of this Section 4, for User's use of the Subject Trackage.
- 4.5     The Base Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.
- (i)     The Base Charge set forth in Section 4.1 of this Agreement shall be revised effective January 1 of each year, beginning January 1, 2013 to compensate for the prior year increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series FCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR") in making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" index for the East District shall be used.

The Base Charge shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year, and applying this percentage of increase or decrease to the current Base Charge to be escalated

- (ii) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the calendar year (2009) prior to the most recently completed calendar year, "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the most recently completed calendar year (2010); and "C" to be the current Base Charge to be escalated, the revised Base Charge would be determined by the following formula:

$B/A \times C = \text{Revised Base Charge, Rounded to Nearest Whole Cent (5 Mills or More Rounds to Next Cent)}$

- (iii) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Surface Transportation Board for determination. In the event said Board is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

PROVIDED, HOWEVER, that under no circumstances, while IR is operating over the Subject Trackage pursuant to this Agreement, shall the per car mile rate ever be less than the established Base Charge provided for in this Section 4.1.

#### **SECTION 5.0 PAYMENT OF BILLS**

- 5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.
- 5.2 The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.
- 5.3 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by Owner for User.

#### **SECTION 6.0 MAINTENANCE OF SUBJECT TRACKAGE**

- 6.1 Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Section 12 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whatsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

- 6.2 Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request

**SECTION 7.0 CONSTRUCTION AND MAINTENANCE OF CONNECTIONS**

- 7.1 Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices
- 7.2 Any additional connections to the Subject Trackage which may be required shall be subject to the Owner's approval (including design), which shall not be unreasonably withheld or delayed, and shall be constructed, maintained, repaired, and renewed as follows
- (i) User or others shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the parties hereto; and
  - (ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto
  - (iii) Upon termination of this Agreement, Owner may at its option remove such portion of trackage and appurtenances located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner will credit User the current fair market value for said salvage.

**SECTION 8.0 ADDITIONS, RETIREMENTS AND ALTERATIONS**

- 8.1 Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.
- 8.2 If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operation, Owner shall have the option to either make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request

**SECTION 9.0 MANAGEMENT AND OPERATIONS**

- 9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.
- 9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.
- 9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative at Owner's rail traffic control center or

such other location as Owner may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage

- 9.4 User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.
- 9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.
- 9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.
- 9.7 Owner may request an investigation at its option if User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. User will schedule the investigation and notify Owner's Local Transportation Officer in the territory. User's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

- 9.8 If Owner requests an investigation, Owner shall have the right to exclude from the Subject Trackage and Interchange Track(s) any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.
- 9.9 In a major offense including, but not limited to, violation of General Code of Operating Rule 1.5, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.
- 9.10 If Owner requests an investigation, an Officer of User will conduct the investigation, but an officer of Owner may be present. After the investigation is concluded, a Transportation Officer of User will arrange to assess discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.
- 9.11 If the disciplinary action is appealed by the employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Subject Trackage or Interchange Track(s) by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds Owner's continued exclusion of such employee).
- 9.12 It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.
- 9.13 The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof shall be operated on a first come, first service basis without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic. Owner does not guarantee or otherwise promise to provide any particular transit or running times over the Subject Trackage. Further, Owner does not guarantee or otherwise promise that operations over the Subject Trackage will not be interrupted. However, Owner shall make best efforts to ensure that any interruptions will be kept to a minimum.
- 9.14 If by reason of any mechanical failure, insufficient hours of service remaining among User's crew, or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

- 9 15 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner and User shall reimburse Owner for the cost thereof
- 9 16 In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

#### **SECTION 10.0 MILEAGE AND CAR HIRE**

All mileage and car hire charges accruing on cars in User's account in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

#### **SECTION 11.0 CLEARING OF WRECKS**

Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 12 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

#### **SECTION 12.0 LIABILITY**

- 12 1 The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third parties), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by the parties to this Agreement or by third party users, all of which are collectively referred to as a "Loss", will be divided as follows:
- (a) If a Loss results from the use of the Subject Trackage solely by the trains and locomotives of one of the parties to this Agreement, then that using party shall be solely responsible for the Loss, even if caused partially or completely by the other party.
  - (b) If a Loss results from the use of the Subject Trackage by the trains and locomotives of both CN and IR, then, (i) each of CN and IR is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) CN and IR are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between or among them as to the cause of the Loss.
  - (c) If a Loss results from the use of the Subject Trackage by trains and locomotives of both IR and any other third party user of the Subject Trackage not a party to this Agreement, then IR's responsibility for the Loss shall be apportioned in the manner specified in Subsection (b) with the other third party user being considered CN for the purpose of determining IR's share of that portion of the Loss which it must assume.
  - (d) Whenever any liability, cost, or expense is assumed by or apportioned to any party to this Agreement hereto under the foregoing provisions, that party shall forever protect, defend,

indemnify, and save harmless the other party to this Agreement and its subsidiaries and affiliates, and all of its respective directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.

- (e) In every case of death or injury suffered by an employee of any party to this Agreement, when compensation to such employee or employee's dependants is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- (f) For purposes of determining liability, pilots furnished by CN to IR pursuant to this Agreement shall be considered as the employees of IR while such employees are on board or getting on or off trains of IR.
- (g) If any suit or action shall be brought against any party for damages which under the provisions of the Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and cost, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- (h) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (i) Notwithstanding the provisions of Section 18.5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.
- (j) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 7, all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

#### **SECTION 13.0                    INVESTIGATION AND CLAIMS**

- 13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement

- 13.2 Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Part 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.
- 13.3 In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.
- 13.4 All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.
- 13.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Part 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).
- 13.6 Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.
- 13.7 It is understood that nothing in this Section 13 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

#### **SECTION 14.0      DEFAULT AND TERMINATION**

In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage.

#### **SECTION 15.0      DISPUTE RESOLUTION**

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be resolved by arbitration. Notice and demand of arbitration shall be sent by certified mail. Within thirty (30) days of receipt of the notice and demand for arbitration, the parties shall select one arbitrator. If the parties are unable to agree upon a single arbitrator, CN shall select one member of the panel, IRR shall select the second member of the panel, and those two shall have ten (10) days to select the third member of the panel. The third member selected must be someone with expertise in the area of the dispute. If, for any reason the two members are unable to agree to a third member, either party may apply to the U.S. District Court for the Northern District of Illinois to appoint an arbitrator as a third member. Any dispute, claim or controversy arising out of or related to this Agreement or the breach, termination, enforcement, interpretation or validity of it, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined through arbitration in accordance with the laws of Illinois and the Illinois Rules of Civil Procedure. The decision of the arbitration shall be final and conclusive upon the parties. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses,

arbitrator in the case of a three member panel, experts and counsel. The compensation, costs and expense of the single arbitrator or third member of the panel, if any, shall be borne equally by the parties. The arbitration shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision or award of the arbitrator.

#### **SECTION 16.0      REGULATORY APPROVAL**

- 16.1    Should implementation of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. Owner will assist and support efforts of User to obtain any such required approval and authorization or exemption.
- 16.2    Each party shall assume and hold the other party harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.
- 16.3    Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the arrangement, User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

#### **SECTION 17.0      ABANDONMENT OF SUBJECT TRACKAGE**

Notwithstanding the provisions of Section 21 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than ninety (90) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. Section 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

#### **SECTION 18.0      GENERAL PROVISIONS**

- 18.1    This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

- 18.2 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 18.3 This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties
- 18.4 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.
- 18.5 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.
- 18.6 All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.
- 18.7 This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.
- 18.8 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either CN or IR to any party other than CN's and IR's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other party.

**SECTION 19.0      SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other party (ies) to this Agreement provided, however, such consent shall not be unreasonably withheld.

**SECTION 20.0      NOTICE**

- 20.1 Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows.

If to Owner:

Region Director Contracts and Administration  
Chicago, Central & Pacific Railroad Company  
17641 South Ashland Avenue  
Homewood, IL 60430

If to User:

General Counsel  
Illinois Railway, L.L.C.

252 Clayton Street, 4th Floor  
Denver, CO 80206

- 20.2 Either party may provide changes in the above addresses to the other party by personal service or certified mail

**SECTION 21.0 COMMENCEMENT, TERM AND TERMINATION**

- 21.1 This Agreement shall take effect immediately upon the later of (i) the date first written above, (ii) the completion of the connecting track at Rockford Junction, or (iii) the effective date of any required regulatory approvals, and shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto. The date that User commences operations over the Subject Trackage shall be referred to herein as the "Commencement Date", and shall be evidenced by an exchange of correspondence between the appropriate officers of the parties hereto.
- 21.2 This Agreement shall continue in full force and effect for a period of five (5) year(s) from the Commencement Date, and shall continue in full force and effect, subject to renewal by either party, for an unlimited number of additional five (5) year terms, provided, however, IR has the right to terminate this Agreement upon giving CN a thirty (30) day advance written Notice.
- 21.3 Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.
- 21.4 Upon termination or non-renewal of this Agreement, or for any other reason, User shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval from the STB or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If User fails to file within (60) days, User hereby expressly authorizes Owner to file with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse Owner for all costs incurred.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written

WITNESS



CHICAGO, CENTRAL & PACIFIC RAILROAD  
COMPANY

By

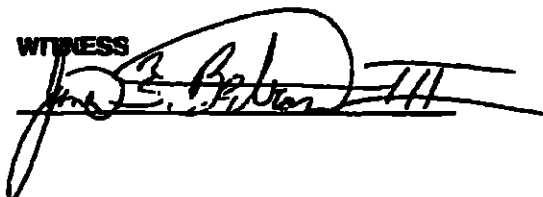


Paul E. Ladue  
Region Director Contracts and Administration

Date:

11/3/2012

WITNESS



ILLINOIS RAILWAY, L.L.C.

By:



Print Name:

Larry W Bush

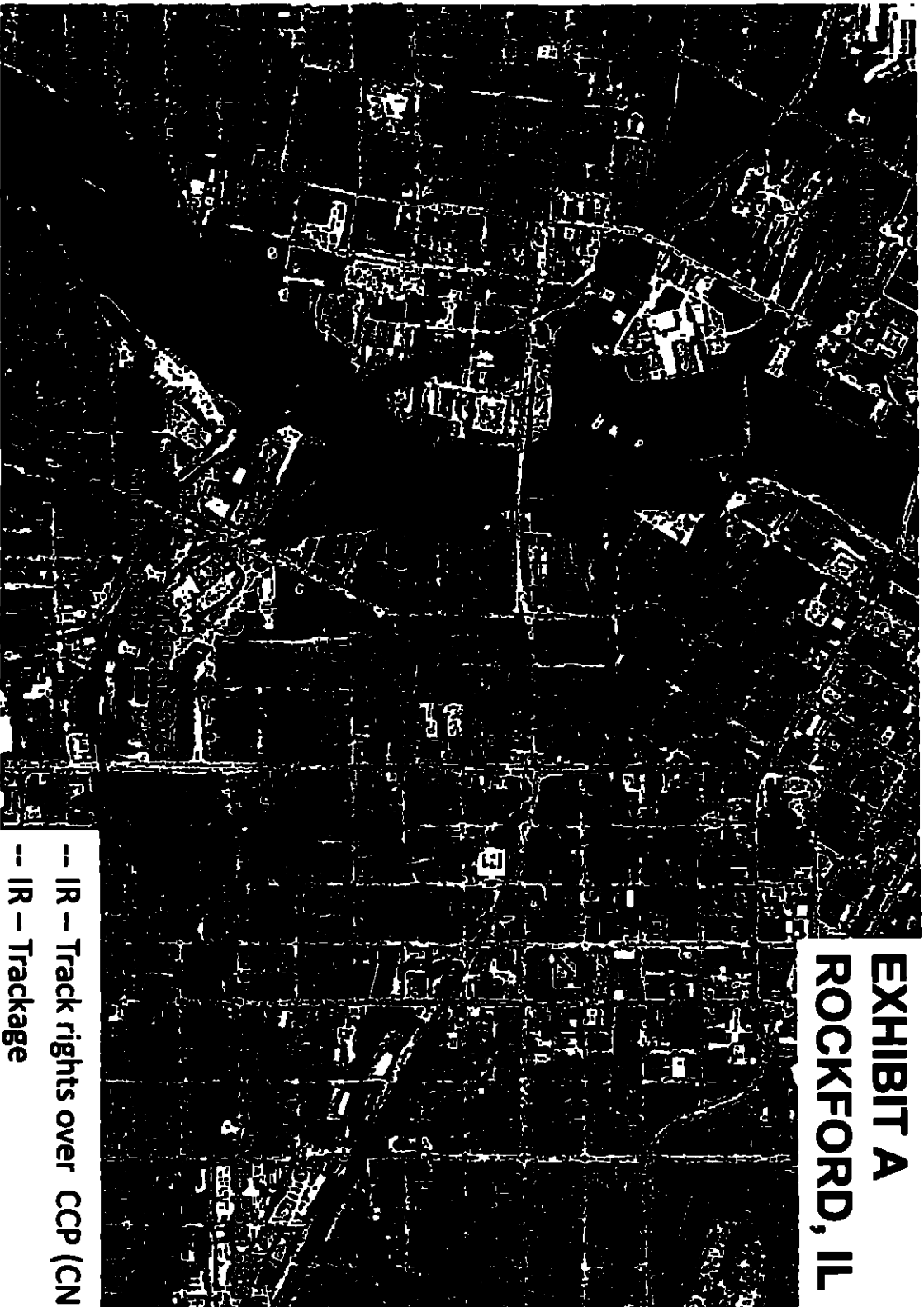
Its:

CFO

Date:

11/19/12

# **EXHIBIT A ROCKFORD, IL**



- IR -- Track rights over CCP (CN)
- IR -- Trackage

## **EXHIBIT F**

### **TRACKAGE RIGHTS AGREEMENT**

**THIS AGREEMENT**, entered into as of this 19 day of January 2012, by and between the **ILLINOIS RAILWAY, L.L.C.**, (hereinafter referred to as "**IR**" or "**OWNER**") and the **CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY**, (hereinafter referred to as "**CN**" or "**USER**").

**WHEREAS**, IR owns and operates a segment of railroad located between Milepost 22.54 ("Rockford Junction") and Milepost 21.90 on IR's Rockford Subdivision in Rockford, IL as shown on Exhibit "A" attached and made a part hereof; and

**WHEREAS**, the CN, IR and City of Rockford ("City") entered into a Memorandum Of Understanding dated April 29, 2010, which, among other things, provided for CN and the IR to build a connecting track at the sole cost and expense of City at Rockford Junction and for IR to provide overhead and local trackage rights to CN between Rockford Junction and Milepost 21.90 on IR's Rockford Subdivision in Rockford, IL; and

**WHEREAS**, CN has requested limited overhead and local trackage rights between Rockford Junction and Milepost 21.90 on IR's Rockford Subdivision in Rockford, IL; and

**WHEREAS**, IR agrees to grant CN limited overhead and local trackage rights for the movement of traffic between Rockford Junction and Milepost 21.90 on IR's Rockford Subdivision in Rockford, IL once the parties have constructed and put in service the connecting track at Rockford Junction subject to the terms and conditions set forth herein.

**NOW THEREFORE**, the parties hereto, intending to be legally bound, agree as follows:

#### **SECTION 1.0                    GRANT OF TRACKAGE RIGHTS**

1.1     Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate, in overhead and local freight service, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of Owner's railroad as shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

- Between CN's future connection to IR at or near Milepost 22.54 (Rockford Junction) and Milepost 21.90 on IR's Rockford Subdivision in Rockford, IL including (1) all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks to be used hereunder, and (2) right-of-way for the aforesaid tracks, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the parties hereto, a distance of approximately 0.64 miles.

#### **SECTION 2.0                    USE OF SUBJECT TRACKAGE**

2.1     User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement, except as provided below.

2.2     Except as may otherwise be provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of storage or servicing of cars or equipment except that nothing

contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

- 2.3 Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause
- 2.4 User shall have the right to operate in either direction over the Subject Trackage.
- 2.5 Owner and User shall work together to establish a schedule for the handling of User's trains.
- 2.6 User shall be responsible for contacting User's dispatcher prior to entering the Subject Trackage to insure that User will not be delayed from departing Subject Trackage at the authorized exit location. User shall ensure that its trains i) have a clear route (or available offline staging capacity) beyond the Subject Trackage, ii) are not staged, held, stored, or parked on the Subject Trackage (except at the direction of Owner), or otherwise unreasonably interfere with the joint use of the Subject Trackage, iii) are staffed with qualified crews that have sufficient hours of service remaining to clear the Subject Trackage, and iv) restore all connection switches for mainline movement on and by Owner (collectively "Clearance Obligations").
- 2.7 User shall provide Owner with train information via AAR EDI 161 standard format and will include train symbol, estimated time of arrival, train length, tonnage, load/empty count, locomotives, and end of train device.
- 2.8 The rights provided to User under the terms of this Agreement are for the sole purpose of User transporting its own traffic over the Subject Trackage. Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the User any right or benefit under or by reason of this Agreement. User shall not move traffic for or on behalf of any other party or foreign railroad or under the guise of doing business as User.
- 2.9 User shall not permit or admit any third party to the use of all or any portion of the Subject Trackage, nor have the right to detour trains of any other railroad over or upon the Subject Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own Equipment over or upon the Subject Trackage, or any portion thereof, the Equipment of any third party which in the normal course of business would not be considered the Equipment of User, provided, however, that the foregoing shall not prevent User, pursuant to a run-through agreement with any railroad, from using locomotives and cabooses of another railroad as its own under this Agreement. In the event that User desires to move traffic over which it is not the linehaul carrier in its trains, User shall make such detailed request in writing as provided in Section 20, but User shall not move such traffic in User's trains without obtaining the prior written consent of Owner which such consent shall not be unreasonably withheld, and which shall require a written amendment to this Agreement prior to movement of said traffic.
- 2.10 User shall not connect or interchange with itself or with any other railroad at any location along the Subject Trackage.

### **SECTION 3.0                    RESTRICTION ON USE**

- 3.1 The trackage rights herein granted are granted for the sole purpose of User using same for overhead and local rights between the terminals of Subject Trackage.
- User shall have the right to ingress and egress the Subject Trackage to serve Gunite Foundries.

## **SECTION 4.0**

### **COMPENSATION**

- 4.1 The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be \_\_\_\_\_ (hereinafter referred to as the "Base Charge").
- 4.2 Thereafter, User will pay Owner a sum computed by multiplying: (i) the Base Charge, as may be revised in accordance with Section 4.5, by (ii) the number of loaded and empty cars, locomotives and caboose units moved by User with its own crews and power in each direction over the Subject Trackage, by (iii) .64 miles. For purposes of this Agreement, each locomotive unit, each caboose, and each platform of an articulated car shall be counted as one car.
- 4.3 With respect to articulate units, the number of cars shall be determined by the AAR Car Type Code as defined in the ULMER Specification Manual. The second character in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S566) would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 53' containers in each well. (Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.)
- 4.4 User will furnish to Owner, in care of Manager Contract Compliance, or their designates, at the end of each month, a statement of the number of loaded and empty cars operated in each direction over the Subject Trackage during the month. Based on this statement, Owner will render to User a bill, computed in accordance with the provisions of this Section 4, for User's use of the Subject Trackage.
- 4.5 The Base Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.
- (i) The Base Charge set forth in Section 4.1 of this Agreement shall be revised effective January 1st of each year, beginning January 1st, 2013 to compensate for the prior year increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" index for the East District shall be used.
- The Base Charge shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the current Base Charge to be escalated.
- (ii) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the calendar year (2009) prior to the most recently completed calendar year; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the most recently completed calendar year (2010); and "C" to be the current Base Charge to be escalated; the revised Base Charge would be determined by the following formula.
- $$B/A \times C = \text{Revised Base Charge, Rounded to Nearest Whole Cent (5 Mills or More Rounds to Next Cent)}$$
- (iii) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be

made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Surface Transportation Board for determination. In the event said Board is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

PROVIDED, HOWEVER, that under no circumstances, while CN is operating over the Subject Trackage pursuant to this Agreement, shall the per car mile rate ever be less than the established Base Charge provided for in this Section 4.1.

#### **SECTION 5.0            PAYMENT OF BILLS**

- 5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.
- 5.2 The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.
- 5.3 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by Owner for User.

#### **SECTION 6.0            MAINTENANCE OF SUBJECT TRackage**

- 6.1 Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Section 12 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.
- 6.2 Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request.

#### **SECTION 7.0            CONSTRUCTION AND MAINTENANCE OF CONNECTIONS**

- 7.1 Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices.

- 7.2 Any additional connections to the Subject Trackage which may be required shall be subject to the Owner's approval, (including design), which shall not be unreasonably withheld or delayed, and shall be constructed, maintained, repaired, and renewed as follows:
- (i) User or others shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the parties hereto; and
  - (ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto.
  - (iii) Upon termination of this Agreement, Owner may at its option remove such portion of trackage and appurtenances located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner will credit User the current fair market value for said salvage.

#### **SECTION 8.0                    ADDITIONS, RETIREMENTS AND ALTERATIONS**

- 8.1 Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.
- 8.2 If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operation, Owner shall have the option to either make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request.

#### **SECTION 9.0                    MANAGEMENT AND OPERATIONS**

- 9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.
- 9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.
- 9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative at Owner's rail traffic control center or such other location as Owner may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage.

- 9.4 User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.
- 9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.
- 9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.
- 9.7 Owner may request an investigation at its option if User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. User will schedule the investigation and notify Owner's Local Transportation Officer in the territory. User's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.
- 9.8 If Owner requests an investigation, Owner shall have the right to exclude from the Subject Trackage and Interchange Track(s) any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.
- 9.9 In a major offense including, but not limited to, violation of General Code of Operating Rule 1.5, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

- 9.10 If Owner requests an investigation, an Officer of User will conduct the investigation, but an officer of Owner may be present. After the investigation is concluded, a Transportation Officer of User will arrange to assess discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.
- 9.11 If the disciplinary action is appealed by the employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Subject Trackage or Interchange Track(s) by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds Owner's continued exclusion of such employee).
- 9.12 It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.
- 9.13 The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof shall be operated on a first come, first service basis without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic. Owner does not guarantee or otherwise promise to provide any particular transit or running times over the Subject Trackage. Further, Owner does not guarantee or otherwise promise that operations over the Subject Trackage will not be interrupted. However, Owner shall make best efforts to ensure that any interruptions will be kept to a minimum.
- 9.14 If by reason of any mechanical failure, insufficient hours of service remaining among User's crew, or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.
- 9.15 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.
- 9.16 In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

## **SECTION 10.0            MILEAGE AND CAR HIRE**

All mileage and car hire charges accruing on cars in User's account in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

## **SECTION 11.0            CLEARING OF WRECKS**

Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 12 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

## **SECTION 12.0            LIABILITY**

- 12.1 The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third parties), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by the parties to this Agreement or by third party users, all of which are collectively referred to as a "Loss", will be divided as follows:
- (a) If a Loss results from the use of the Subject Trackage solely by the trains and locomotives of one of the parties to this Agreement, then that using party shall be solely responsible for the Loss, even if caused partially or completely by the other party.
  - (b) If a Loss results from the use of the Subject Trackage by the trains and locomotives of both CN and IR, then: (i) each of CN and IR is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) CN and IR are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between or among them as to the cause of the Loss.
  - (c) If a Loss results from the use of the Subject Trackage by trains and locomotives of both CN and any other third party user of the Subject Trackage not a party to this Agreement, then CN's responsibility for the Loss shall be apportioned in the manner specified in Subsection (b) with the other third party user being considered IR for the purpose of determining CN's share of that portion of the Loss which it must assume.
  - (d) Whenever any liability, cost, or expense is assumed by or apportioned to any party to this Agreement hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its subsidiaries and affiliates, and all of its respective directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.
  - (e) In every case of death or injury suffered by an employee of any party to this Agreement, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay

said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

- (f) For purposes of determining liability, pilots furnished by IR to CN pursuant to this Agreement shall be considered as the employees of CN while such employees are on board or getting on or off trains of CN.
- (g) If any suit or action shall be brought against any party for damages which under the provisions of the Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and cost, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- (h) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (i) Notwithstanding the provisions of Section 18.5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.
- (j) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 7, all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

#### **SECTION 13.0            INVESTIGATION AND CLAIMS**

- 13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.
- 13.2 Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.
- 13.3 In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

- 13.4 All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.
- 13.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).
- 13.6 Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.
- 13.7 It is understood that nothing in this Section 13 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

#### **SECTION 14.0            DEFAULT AND TERMINATION**

In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage.

#### **SECTION 15.0            DISPUTE RESOLUTION**

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be resolved by arbitration. Notice and demand of arbitration shall be sent by certified mail. Within thirty (30) days of receipt of the notice and demand for arbitration, the parties shall select one arbitrator. If the parties are unable to agree upon a single arbitrator, CN shall select one member of the panel, IRR shall select the second member of the panel, and those two shall have ten (10) days to select the third member of the panel. The third member selected must be someone with expertise in the area of the dispute. If, for any reason the two members are unable to agree to a third member, either party may apply to the U.S. District Court for the Northern District of Illinois to appoint an arbitrator as a third member. Any dispute, claim or controversy arising out of or related to this Agreement or the breach, termination, enforcement, interpretation or validity of it, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined through arbitration in accordance with the laws of Illinois and the Illinois Rules of Civil Procedure. The decision of the arbitration shall be final and conclusive upon the parties. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, arbitrator in the case of a three member panel, experts and counsel. The compensation, costs and expense of the single arbitrator or third member of the panel, if any, shall be borne equally by the parties. The arbitration shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision or award of the arbitrator.

**SECTION 16.0****REGULATORY APPROVAL**

- 16.1 Should implementation of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. Owner will assist and support efforts of User to obtain any such required approval and authorization or exemption.
- 16.2 Each party shall assume and hold the other party harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.
- 16.3 Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the arrangement, User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

**SECTION 17.0****ABANDONMENT OF SUBJECT TRACKAGE**

Notwithstanding the provisions of Section 21 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than ninety (90) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. Section 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

**SECTION 18.0****GENERAL PROVISIONS**

- 18.1 This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.
- 18.2 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 18.3 This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.
- 18.4 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

- 18.5 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.
- 18.6 All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.
- 18.7 This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.
- 18.8 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either CN or IR to any party other than CN's and IR's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other party.

#### **SECTION 19.0      SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other party (ies) to this Agreement provided, however, such consent shall not be unreasonably withheld.

#### **SECTION 20.0      NOTICE**

- 20.1 Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows.

If to Owner:

General Counsel  
Illinois Railway, L.L.C.  
252 Clayton Street - 4th Floor  
Denver, CO 80206

If to User:

Region Director Contracts and Administration  
Chicago, Central & Pacific Railroad Company  
17641 South Ashland Avenue  
Homewood, IL 60430

- 20.2 Either party may provide changes in the above addresses to the other party by personal service or certified mail.

#### **SECTION 21.0      COMMENCEMENT, TERM AND TERMINATION**

- 21.1 This Agreement shall take effect immediately upon the later of (i) the date first written above, (ii)

the completion of the connecting track at Rockford Junction, or (iii) the effective date of any required regulatory approvals, and shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto. The date that User commences operations over the Subject Trackage shall be referred to herein as the "Commencement Date", and shall be evidenced by an exchange of correspondence between the appropriate officers of the parties hereto.

- 21.2 This Agreement shall continue in full force and effect for a period of ten (10) <sup>5+27</sup> year(s) from the Commencement Date, and shall continue in full force and effect, subject to renewal by either party, for an unlimited number of additional five (5) year terms, provided, however, CN has the right to terminate this Agreement upon giving IR a thirty (30) day advance written Notice
- 21.3 Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.
- 21.4 Upon termination or non-renewal of this Agreement, or for any other reason, User shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval from the STB or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If User fails to file within (60) days, User hereby expressly authorizes Owner to file with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse Owner for all costs incurred.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

WITNESS



CHICAGO CENTRAL & PACIFIC RAILROAD  
COMPANY

By: 

Paul E. Ladus  
Region Director Contracts and Administration

Date: 1/3/2012

WITNESS



ILLINOIS RAILWAY, L.L.C.

By: 

Print Name: Larry W Bush

Its: CFO

Date: 1/19/12

**Exhibit A**  
**CN track Rights over IR**

